



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

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**DECISION OF THE BOARD**

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Mailed and Filed: SEPTEMBER 08, 2022

IN THE MATTER OF:

Appeal Board No. 623629

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective September 2, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed May 3, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following FINDINGS OF FACT: The claimant was hired as an investment banking analyst with the employer; his first day of work was on March 29, 2021. At the time of hire, the employer advised the claimant that his position required three licenses; he was further advised that the employer required him to obtain these licenses within 100 days from his start date. The claimant agreed to take the required exams and began studying for them. However, due to processing issues in the employer's compliance department, the claimant was not able to register for the exams until June 3, 2021. At that point, the claimant was given a window for taking the exams that ran from June 3, 2021 to October 1, 2021.

The claimant did not register for the exams when the window opened because he

wanted more time to study and because he had until October 1 to take the exams. Although by early July, the claimant had reached 100 days from his start date and he had not yet taken the exams, the employer did not discharge him. The claimant intended to take the exams in September but was discharged on September 1 for failing to obtain the required licenses.

OPINION: The credible evidence establishes that the claimant was discharged by the employer for failing to obtain licenses required for his position. The determination at issue is based on the doctrine of provoked discharge and applies where an employee voluntarily engages in conduct which transgresses a legitimate known obligation and leaves the employer no choice but to discharge him" (see *Matter of DeGrego*, 39 NY2d 180, 183 [1976]). The Court in *DeGrego* established this three-prong test. In order for a claimant to be held to have provoked his, or her, discharge, all three prongs of the test must be met. The claimant must be 1) an employee who voluntarily engages in conduct which, 2) transgresses a legitimate known obligation, and 3) leaves the employer no choice but to discharge him. When all of these conditions have been met, the termination is considered to be a voluntary leaving of employment by provoked discharge. (*Matter of Dounn*, 71 AD2d 746 [3d Dept 1979]).

The claimant conceded that he knew that the licenses were required for his position and that the employer had advised him that he needed to take the exams and obtain the necessary licenses within 100 days of his start date. In addition, the claimant readily admitted that he did not sign up to take the exams or obtain his licenses prior to early July when he would have reached the 100-day deadline. However, we find that the evidence fails to establish that the employer was left with no choice but to discharge the claimant when he failed to obtain the licenses. Significantly, the employer did not discharge the claimant for failing to obtain the licenses within 100 days of his start date and instead allowed the claimant to continue in his position without the licenses from July through September. We further note that the claimant's credible, uncontroverted, and corroborated testimony establishes that, given the window provided to him, he then had until October 1 to take the exams in order to obtain the necessary licenses. As the claimant had not been discharged at the end of the 100-day period and had until October 1 to take the licensing exams, the evidence fails to establish that the employer was left with no choice but to discharge the claimant on September 1, a full month before the window for the claimant to take the exams would close. Since all three prongs necessary for a provoked discharge have not been established, the claimant cannot be said to have provoked his own discharge. Accordingly,

we conclude that the claimant's separation occurred under non-disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective September 2, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER